

Jul 26, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STEVEN E. NEELY,

Petitioner,

v.

WASHINGTON STATE,

Respondent.

NO: 2:19-CV-00153-RMP

ORDER SUMMARILY DISMISSING  
HABEAS PETITION

Petitioner Steven E. Neely, a prisoner currently housed at the Spokane County Jail, brought this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254, while incarcerated at the Coyote Ridge Corrections Center. The \$5.00 filing fee has been paid.

**PROPER RESPONDENT**

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the

1 petitioner is incarcerated, the proper respondent is generally the warden of the  
2 institution where the petitioner is incarcerated. *Padilla*, 542 U.S. at 436. Failure to  
3 name a proper respondent deprives federal courts of personal jurisdiction. *See*  
4 *Stanley*, 21 F.3d at 360.

### 5 **EXHAUSTION REQUIREMENT**

6 Petitioner challenges a 2018 Spokane County guilty plea to first degree child  
7 molestation. He was sentenced to 68 months incarceration. Petitioner indicates that  
8 he did not appeal. ECF No. 1 at 2.

9 In his grounds for relief, Petitioner argues that the State of Washington has no  
10 jurisdiction to decide federal constitutional matters. ECF No. 1 at 5–13. It has long  
11 been settled that state courts are competent to decide questions arising under the U.S.  
12 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the  
13 state court, as much as it is that of the federal courts, when the question of the validity  
14 of a state statute is necessarily involved, as being in alleged violation of any  
15 provision of the federal constitution, to decide that question, and to hold the law void  
16 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805  
17 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal  
18 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments  
19 to the contrary lack merit.

20 Additionally, before a federal court may grant habeas relief to a state prisoner,  
21 the prisoner must exhaust the state court remedies available to him. 28 U.S.C. §

1 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that  
2 a prisoner give the state courts an opportunity to act on his claims before he presents  
3 those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999).  
4 A petitioner has not exhausted a claim for relief so long as the petitioner has a right  
5 under state law to raise the claim by available procedure. *See id.*; 28 U.S.C. §  
6 2254(c).

7 To meet the exhaustion requirement, the petitioner must have “fairly  
8 present[ed] his claim in each appropriate state court (including a state supreme court  
9 with powers of discretionary review), thereby alerting that court to the federal nature  
10 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,  
11 365–66 (1995). A petitioner fairly presents a claim to the state court by describing  
12 the factual or legal bases for that claim and by alerting the state court “to the fact  
13 that the ... [petitioner is] asserting claims under the United States Constitution.”  
14 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th  
15 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim  
16 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–66.

17 Furthermore, to fairly present a claim, the petitioner “must give the state  
18 courts one full opportunity to resolve any constitutional issues by invoking one  
19 complete round of the State's established appellate review process.” *O'Sullivan*, 526  
20 U.S. at 845. Once a federal claim has been fairly presented to the state courts, the  
21 exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275 (1971).

1 It does not appear from the face of the Petition that Petitioner has exhausted his state  
2 court remedies as to each of his grounds for relief. Indeed, Petitioner affirmatively  
3 represents that he did not exhaust his state court remedies.

#### 4 **GROUND FOR FEDERAL HABEAS RELIEF**

5 Petitioner asserts that the Washington state constitution contradicts the federal  
6 constitution regarding the Fifth Amendment right to “presentment or indictment of  
7 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering  
8 his arrest, conviction and imprisonment illegal.

9 Petitioner seems to argue that because the state courts have defied “federally  
10 established procedures and processes for the adjudication of crimes” only “a court  
11 of federal jurisdiction” has jurisdictional authority over his claims. His bald  
12 assertion that “due process of the law was ignored” is unsupported by his factual  
13 allegations.

14 The United States Supreme Court stated long ago: “Prosecution by  
15 information instead of by indictment is provided for by the laws of Washington.  
16 This is not a violation of the Federal Constitution.” *See Gaines v. State of*  
17 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the  
18 contrary presented in his four grounds for federal habeas relief are legally frivolous.

19 Because it plainly appears from the petition and the attached exhibits that  
20 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF  
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1 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in  
2 the United States District Courts. All pending motions are **DENIED as moot**.

3 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
4 enter judgment, provide copies to Petitioner, and close the file. The Court certifies  
5 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
6 taken in good faith, and there is no basis upon which to issue a certificate of  
7 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
8 appealability is therefore **DENIED**.

9 **DATED** July 26, 2019.

10  
11 *s/ Rosanna Malouf Peterson*  
12 ROSANNA MALOUF PETERSON  
13 United States District Judge  
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